

1 UNITED STATES OF AMERICA  
2 EASTERN DISTRICT OF MISSOURI  
3 EASTERN DIVISION

4 MONSANTO COMPANY and )  
5 MONSANTO TECHNOLOGY LLC, )

6 Plaintiffs, )

7 v. ) No. 4:09-cv-00686-ERW

8 E.I. DUPONT DE NEMOURS AND )  
9 COMPANY and PIONEER HI-BRED )  
10 INTERNATIONAL, INC., )

11 Defendants. )

12 TRANSCRIPT OF PROCEEDINGS

13 BEFORE THE HONORABLE E. RICHARD WEBBER  
14 UNITED STATES DISTRICT JUDGE

15 June 21, 2010

16 APPEARANCES:

17 FOR PLAINTIFF: Dan K. Webb, Esq.  
18 (via telephone) George Lombardi, Esq.  
19 WINSTON & STRAWN, LLP  
20 35 W. Wacker Drive  
21 Chicago, IL 60601  
22 312-558-5600

23 FOR PLAINTIFF: John J. Rosenthal, Esq.  
24 WINSTON AND STRAWN, LLP  
25 1700 K Street, NW  
Washington, DC 20006  
202-282-5000

FOR PLAINTIFF: Joseph P. Conran, Esq.  
Greg G. Gutzler, Esq.  
HUSCH BLACKWELL SANDERS, LLP  
190 Carondelet Plaza, Suite 600  
St. Louis, MO 63105-3441  
314-480-1500

EXHIBIT B

1 FOR DEFENDANT: C. David Goerisch, Esq.  
2 Andrew Rothschild, Esq.  
3 LEWIS RICE FINGERSH  
4 600 Washington, Suite 2500  
5 St. Louis, MO 63101  
6 314-444-7600

7 FOR DEFENDANT: James P. Denvir, III, Esq.  
8 Christopher L. Hayes, Esq.  
9 BOIES AND SCHILLER, LLP  
10 5301 Wisconsin Avenue, Suite 800  
11 Washington, DC 20015  
12 202-237-2727

13 FOR DEFENDANT: Leora Ben-Ami, Esq.  
14 Thomas F. Fleming, Esq.  
15 Christopher T. Jagoe, Esq.  
16 KAYE SCHOLER, LLP  
17 425 Park Avenue  
18 New York, NY 10022  
19 212-836-7203

20 REPORTED BY: Christine A. Simpson, RMR, CRR,  
21 Official Court Reporter  
22 111 South Tenth Street, 3rd Floor  
23 St. Louis, MO 63102  
24 (314) 244-7989  
25

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1 (Proceedings began at 1:07 p.m.)

2 THE COURT: I understand we have a technical issue  
3 and so the choice is to select between the image of the  
4 attorney or the image of the exhibit and I would assume  
5 that the exhibit is what everyone needs to see. Am I  
6 correct or is that incorrect?

7 MS. BEN-AMI: I think that's right for at least  
8 one of the motions, Your Honor.

9 THE COURT: Okay. Why don't we go with that and  
10 then once we do that, can we switch if we need to?

11 MS. BEN-AMI: I think we can, Your Honor.

12 THE COURT: Okay. All right. Is there any  
13 objection to proceeding in that fashion?

14 MR. CONRAN: (Nonverbal response.)

15 THE COURT: All right. Very well. The case is  
16 Monsanto -- please be seated -- Monsanto Company and  
17 Monsanto Technology LLC versus DuPont, Pioneer. The case  
18 number is 4:09-cv-00686-ERW.

19 There are several motions that I'll be considering  
20 today. First, Monsanto's Motion for a Protective Order  
21 Relating to Third-Party Document Subpoenas, Document No.  
22 160. I'll stop there for just a moment.

23 Can -- is there a good audio connection in  
24 Chicago?

25 MR. WEBB: Yes, Your Honor, this is Dan Webb and I

1 switching strategy. That was what we told the Court back  
2 in September.

3 Now if you look at the second exhibit that we used  
4 back in September, a thing of beauty.

5 THE COURT: And a joy forever.

6 MR. DENVIR: It's been joy to me, Your Honor. My  
7 colleague prepared that, but it's my favorite exhibit.  
8 And what I would draw the Court's attention to here, Your  
9 Honor, is that this is -- this is a summary of what the  
10 counterclaims alleged -- and they alleged an unlawful  
11 scheme that had five key related components, each by  
12 itself anti-competitive and each contributing to the  
13 exclusionary effects of the whole.

14 And there on the bottom right each company -- each  
15 component as part of Monsanto's integrated switching  
16 strategy, again the use of switching strategy to encompass  
17 all of this anti-competitive license restrictions in  
18 Monsanto's agreements.

19 So first, to force the industry without, Your  
20 Honor, 32 as in the platform trait, that's the strategy to  
21 switch the industry from Roundup Ready 1 to Roundup Ready  
22 2. Second, to compete competitive generic Roundup Ready  
23 -- of the competitive generic Roundup Ready platform trait  
24 to extend the temporal scope of that patent monopoly.

25 And then finally, Your Honor, to extend that

1 patent monopoly into adjacent markets for traits stacked  
2 with generic Roundup Ready platform trait, that on its  
3 face implicates these anti-competitive license  
4 restrictions.

5 So, Your Honor, the Court says the  
6 anti-competitive license restrictions form the basis for  
7 defendants switching strategy theory and submit to the  
8 Court that what that means is what we have alleged it  
9 means, which means it encompasses the -- the restrictions  
10 in Monsanto's licenses that prohibit independent seed  
11 companies and germplasm developers from stacking, it  
12 includes anti-competitive restrictions in Monsanto's  
13 licenses that prevent independent seed companies from  
14 being sold to anyone but Monsanto.

15 It includes anti-competitive provisions in  
16 Monsanto's licenses which prevent -- which further  
17 buttress Monsanto's poisoned pill provisions by  
18 prohibiting co-branding.

19 So all of these restrictions, Your Honor, from the  
20 beginning we have used to describe our switching theory.

21 Finally, Your Honor, the third demonstrative we  
22 use before Your Honor last September 2nd, the key point  
23 here was that the coerced ISC switching strategy is  
24 alleged to be the centerpiece of Monsanto's monopolistic  
25 campaign.

1           Again, through unlawful scheme alleged herein,  
2           according to the complaints, counterclaims, has five key  
3           interrelated -- five key related components, each by  
4           itself anti-competitive and each contributing to the  
5           exclusionary effects through the whole.

6           Now, Your Honor, I'm not going to walk you through  
7           these exhibits, but at pages 3 through 5 of the  
8           demonstratives we have handed up to the Court I have  
9           described in more detail some of the counterclaims both in  
10          the first set of counterclaims and in the second amended  
11          set of counterclaims, which -- which describe -- which  
12          describe the switching strategy as encompassing all of  
13          these various elements.

14          Now the other thing, Your Honor, that the  
15          September 16th order says is that the claims that are not  
16          stayed are claims which do not hinge on the validity of  
17          Monsanto's patents.

18          If you'd turn to page 6, please. The Court says  
19          in the order at page 4, the order recognizes -- we say  
20          this, the order recognizes that, quote, defendants'  
21          switching strategy also does not hinge on the validity of  
22          plaintiffs' patents, although it would require significant  
23          patent and license related discovery.

24          Now, Your Honor, we say that anti-competitive  
25          license restrictions do not hinge on the validity of